for governor; in 1896 candidates for president and secretary of state; in 1897 for governor; in 1898 for secretary of state; in 1899 for governor; in 1900 for president and secretary of state; in 1901 for governor; in 1902 for secretary of state; in 1903 for governor; in 1904 for president and secretary of state; in 1905 for governor; in 1906 for secretary of state; in 1908 for president, governor, and secretary of state; in 1910 for governor and secretary of state; in 1912 for president, governor and secretary of state; in 1924 for president, governor and secretary of state; in 1926 for governor and secretary of state; in 1928 for president, governor and secretary of state; in 1932 for president, governor and secretary of state; and in 1946 for governor. In addition, the Party in Ohio has nominated other candidates continuously over the years both before and after 1946 whose names have not appeared on the ballot. It will continue to nominate candidates for political office in Ohio in the future. At its meeting of January 11, 1970, the Ohio State Committee nominated John O'Neill as the Socialist Labor Party candidate for governor of Ohio and Peter Kapitz as the Socialist Labor Party candidate for United States Senate for the 1970 election.

3. The plaintiff Joseph Pirincin is a citizen of Cleveland, Ohio, and is a duly qualified and registered voter in the City of Cleveland and State of Ohio. He is the duly elected, qualified and acting executive secretary of the Ohio branch of the Socialist Labor Party. Plaintiff Pirincin sues on behalf of himself and all other Ohio members of the Socialist Labor Party who seek to exercise freely the rights guaranteed them by the Constitution of the United States including the fundamental right to participate in free and democratic elections. These persons constitute a class too

numerous to bring before this Court. There are common questions of law and fact affecting all members of the class. A common relief is sought. Plaintiff Pirincin will adequately represent the class.

4. Defendant James A. Rhodes, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Governor of the State of Ohio with his office and official residence in Columbus, Ohio. The Governor is charged with the general duty of enforcing the statutes of the State of Ohio and with the particular responsibility under Ohio Revised Code 3505.38 of signing the certificates of election issued by the Secretary of State of Ohio to those persons declared duly elected to office. He is also charged with filling by appointment any vacancy in Ohio's representation to the Senate of the United States until the next regular state election as provided by Ohio Revised Code 3521.02; and with issuing writs for special elections as provided by Ohio Revised Code 3521.03.

5. Defendant Ted W. Brown, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Secretary of the State of Ohio with his office and official residence in Columbus, Ohio. The Secretary of State is charged under Ohio Revised Code Section 3505.39 with mailing certificates of election to presidential electors; and under Ohio Revised Code Section 3505.38 with issuing certificates of election to other state officers. Under Ohio Revised Code Section 3501.05 he is designated as the chief election officer of the State of Ohio and is charged with determining and prescribing the forms of ballots and the forms of all blanks required by law for

use by candidates, committees and boards of elections. He is further charged with certifying to the several boards of elections the names of candidates for state offices.

6. Defendant Paul W. Brown, as are his successors in office, is sued in his representative capacity as the duly qualified and acting attorney-general of the State of Ohio with his office and official residence in Columbus, Ohio. The attorney-general is the chief law officer for the State of Ohio and all of its departments as provided by Section 109.02, Ohio Revised Code. He has express statutory duties relative to the Ohio election process as set forth in Sections 3505.35, 3519.01, 3513.06, 3513.271 and 3515.13, Ohio Revised Code.

Jurisdiction

7. The Court has jurisdiction of the parties and of the subject matter of this complaint under 42 United States Code, Sections 1981, 1983 and 1988; 28 United States Code, Section 1343 (3), (4); and 28 United States Code, Sections 2201 and 2202; and Amendments I and XIV of the United States Constitution.

First Cause of Action

8. For their first cause of action plaintiffs incorporate by reference the allegations of paragraph 1 through 7 of this Complaint and say further as follows:

9. Plaintiffs say that for 80 years the Socialist Labor Party has been a bona fide American political party and that it seeks to be recognized as such by the State of Ohio. On July 2, 1968, the Socialist Labor Party and its Ohio members filed an action in this Court, Civil Action No. 68-

224,, seeking declaratory and injunctive relief and challenging the constitutionality of Section 3517.01, Ohio Revised Code. This statute prevented the Socialist Labor Party from qualifying as a political party in Ohio because it defined a political party as:

> . . . any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state at least ten per cent of the entire vote cast for governor or which filed with the secretary of state at least ninety days before an election a petition signed by qualified electors equal in number to at least fifteen per cent of the total vote for governor at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding election. . . .

Based upon the 1966 vote for governor, the Socialist Labor Party would have needed 433,100 valid signatures to comply with the 15 per cent requirement, a figure which is and was prohibitive.

10. This Court declared in an opinion rendered on August 29, 1968, in Civil Action No. 68-224, "that to the extent that the Ohio Elections Laws impose unreasonable restrictions on the qualifications of political third parties . . . they are unconstitutional and 'void". In *Williams* v. *Rhodes*, 393 U.S. 23 (October 15, 1968), the United States Supreme Court affirmed this Court and expressly held the fifteen per cent statute to be an unreasonable burden on voting and associational rights and a violation of these plaintiffs' First and Fourteenth Amendment rights.

11. Plaintiffs say that subsequent to the Supreme Court's decision as above cited, the Ohio General Assembly amended Section 3517.01, Ohio Revised Code and the statute, effective October 30, 1969, now provides as follows:

> A political party within the meaning of Title XXXV [35] of the Revised Code is any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state or nominees for presidential electors at least seven per cent of the entire vote cast for such office or which filed with the secretary of state a petition signed by qualified electors equal in number to at least seven per cent of the total vote for governor or nominees for presidential electors at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding primary election, held in even-numbered years, that occurs more than one hundred twenty days after the date of filing. No such group of electors shall assume a name or designation which is similar, in the opinion of the secretary of state, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast seven per cent of the total vote cast at an election for the office of governor or president it shall cease to be a political party.

12. Plaintiffs say that Section 3517.01, Ohio Revised Code, as amended, contains the same constitutional infirmities possessed by its predecessor; that it imposes an unreasonable burden on plaintiffs' right of access to the ballot without the showing of a compelling necessity suffi-

cient to justify the burden; that the seven per cent (7%) standard for a new political party means that plaintiffs would have to file with the Secretary of State of Ohio 277,179 valid signatures in order to qualify the Socialist Labor Party to participate in the 1970 elections in Ohio; that this figure is prohibitive; that the companion requirement that a political party secure seven per cent of the votes cast for governor or president in order to preserve its status as a party is equally unreasonable and that no compelling necessity can be shown to justify such a requirement; that these plaintiffs are being denied the right to participate in the election process of the State of Ohio by virtue of a statute patently designed to perpetuate Ohio's two or three party political monopoly; and that plaintiffs' rights guaranteed them by the First Amendment and Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment of the United States Constitution are violated by the arbitrary, unreasonable, repressive and prohibitive requirements of Section 3517.01, Ohio Revised Code.

SECOND CAUSE OF ACTION

13. For their second cause of action plaintiffs incorporate by reference the allegations of paragraphs 1 through 12 of this Complaint and say further as follows:

14. Plaintiffs say that Sections 3505.10, 3513.11, 3517.02, 3517.03 and 3517.04, Ohio Revised Code, impose upon political parties unduly burdensome and unreasonable requirements; and that even if the number of signatures of voters required for a new political party to qualify was reduced to constitutionally permissible dimensions, there are provisions in the above cited sections of the Ohio Code

that would still prevent the Socialist Labor Party from obtaining recognition as a political party. These provisions include the following:

a. At the primary election, a political party must elect a state central committee consisting of two members from each congressional district and at least one member of a county central committee from each ward or precinct in each county in Ohio, Sections 3517.02-04, Ohio Revised Code.

b. Delegates and alternates must be elected at the primary to a national convention, Section 3505.10, Ohio Revised Code. [Sixth paragraph of Statute]

c. The political party must hold a state convention composed of delegates who shall be its candidates for state offices, except judicial offices; its candidates for election to the United States Senate and House of Representatives, and to the Ohio general assembly; members of its state central and executive committees, and the chairmen of its county central and executive committees and 500 delegates apportioned by its state central committee among the several counties of the state in proportion to its party's vote for governor cast in the several counties at the last preceding general election, Section 3513.11, Ohio Revised Code.

15. Plaintiffs say that Section 3513.12, Ohio Revised Code, requires a candidate for national convention delegate or alternate to file with his declaration of candidacy and certificate a statement in writing signed by him in which he must state his first and second choice for nomination as candidate of his party for the presidency of the United States. Plaintiffs say that this statute requires a political

party to run a candidate for president of the United States; that it requires an Ohio political party to hold a national convention; that it requires each candidate for delegate or alternate to have at least two stated choices for president. It is an unwarranted and unnecessary intrusion into the internal affairs of political parties.

16. Plaintiffs say that the several statutes cited and described in this second cause of action compel third political parties to pattern their structure according to the apparatus established by the Democratic and Republican parties, which political parties are recognized by the State of Ohio; that the said apparatus is complex and involved and beyond the means or capacity of the Socialist Labor Party to erect; and that the Socialist Labor Party has a different internal structure which it should not be forced to abandon as the price of maintaining recognition as a political party, assuming it secures the necessary signatures to qualify. The effect, therefore, is to prevent the Socialist Labor Party or any other small party from obtaining the status of a recognized political party in Ohio. No justification of constitutional dimension may be shown by the State to justify these elaborate requirements. Plaintiffs and others are thereby denied the First Amendment rights of freedom of speech, assembly, and petition guaranteed them by the United States Constitution without any compelling state interest sufficient to justify such denial. The classifications established by the said statutes are frivolous, arbitrary, oppressive, discriminatory and unreasonable; and these plaintiffs are denied the Due Process and Equal Protection of Law and the Privileges and Immunities of Citizens of the United States guaranteed them by the Fourteenth Amendment of the United States Constitution.

17. Plaintiffs say that Sections 3505.10, 3513.11, 3513.12, 3517.02, 3517.03 and 3517.04, Ohio Revised Code do not fall within the scope of the State's police power and that they are not reasonably designed to accomplish any legitimate purpose or to protect any legitimate interest of the State of Ohio; and that these statutes are unconstitutional and void and should be so declared by this Court.

THIRD CAUSE OF ACTION

18. For their third cause of action plaintiffs incorporate by reference the allegations of paragraphs 1 through 17 of this Complaint and say further as follows:

19. Plaintiffs say that Section 3517.07, Ohio Revised Code, provides:

> No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.
>
> Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it de-

sires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general election in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

20. Plaintiffs say that this statute conditions a place on the ballot upon the execution of an unconstitutional oath; that it sweeps within its ambit conduct protected by the First Amendment of the United States Constitution; that

it is void because of its vagueness; that it illegally places the burden of proof upon those persons claiming the benefits of the statute; that it accords the Democratic and Republican party special privileges; that it creates an unreasonable, unnecessary, oppressive, arbitrary and discriminatory classification and thereby denies these plaintiffs the Due Process and Equal Protection of Law and the Privileges and Immunities of Citizens of the United States guaranteed them by the Fourteenth Amendment of the United States Constitution.

21. Plaintiffs say that unless they are granted relief by this Court, they will suffer irreparable injury. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

(1). That upon the filing of this Complaint the presiding judge of this Court call to his assistance in the hearing and determination thereof two other judges, of whom at least one shall be a circuit judge, as prescribed in 28 United States Code, Sections 2281 and 2284 and that this cause be advanced for hearing as soon as practicable.

(2) That a permanent injunction issue from such three-judge court restraining the defendants, their agents and successors from enforcing Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, insofar as these sections or provisions or parts of them deprive plaintiffs of constitutionally guaranteed rights.

(3) That the Court hold and declare that Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, or the per-

tinent sections or provisions or parts of them, are unconstitutional and void as being contrary to Amendments I and XIV of the United States Constitution;

(4) That the Ohio General Assembly be authorized and directed by this Court to prescribe fair and equitable guidelines for new political parties so that the plaintiff Socialist Labor Party, as a bona fide American political party, may secure official recognition as a political party in Ohio with access to the ballot for itself and its candidates.

(5) That pending the adoption of new and constitutionally acceptable requirements for new political parties by the Ohio General Assembly, this Court hold and declare that the plaintiff Socialist Labor Party is a duly qualified party entitled to participate on an equal basis with other political parties in Ohio and specifically authorized to have its name and the names of its candidates for public office printed on the Ohio ballot for the 1970 elections.

(6) That pending the hearing and determination of the prayer for permanent relief, the Court enter an interlocutory injunction restraining any of these defendants or their agents or successors from attempting in any way to enforce Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, insofar as these statutes, or sections or provisions or parts of them, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution; and that these defendants be specifi-

cally restrained from causing ballots to be printed for the May 5, 1970 primary elections or November 3, 1970 general elections unless such ballots contain the name of the Socialist Labor Party and its candidates for public office.

(7) And for such other and further relief as the Court may deem equitable and proper.

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Answer

Civil Action File No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied for lack of knowledge.

2. Denied for lack of knowledge.

3. Denied for lack of knowledge.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

9. Admitted, except allegation that for 80 years the Socialist Labor Party has been a bona fide American political party, which is denied for lack of knowledge.

10. Admitted.

11. Admitted.

12. Denied.

14. Denied, except for provisions of statutes enumerated in subparagraphs (a) through (c) of paragraph 14.

15. Admitted, except allegation that the enumerated provisions of Section 3513.12, Revised Code, are an unwarranted and unnecessary intrusion into the internal affairs of political parties.

16. Denied, except allegations that the Democratic and Republican parties are political parties recognized by the State of Ohio and that the Socialist Labor Party has a different internal structure.

17. Denied.

19. Admitted.

20. Denied.

21. Denied.

Further answering, Defendants deny each and every allegation of the complaint not heretofore specifically admitted. Wherefore, having fully answered, said Defendants pray that the complaint be dismissed.

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Defendants' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *etc., et al.*,

Defendants.

Now come the defendants James A. Rhodes, Governor of Ohio, Ted W. Brown, Secretary of State of Ohio, and Paul W. Brown, Attorney General of Ohio, and appeal to the Supreme Court of the United States from the judgment and final order entered in this case on July 29, 1970 as amended July 31, 1970.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

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Plaintiffs' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *etc., et al.*,

Defendants.

Plaintiffs Socialist Labor Party, Ohio State Committee of the Socialist Labor Party and Joseph Pirincin hereby give notice of their appeal to the Supreme Court of the United States from that part of the judgment and final order entered in this case on July 29, 1970, as amended July 31, 1970, which upheld the constitutionality of Section 3517.07 of the Ohio Revised Code. This appeal is taken pursuant to 28 U.S.C. Section 1253.

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Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

Eastern Division

Case No. 70-24

HELEN MARCIA SWEETENHAM, 10803 Magnolia, Cleveland, Ohio, 44106,

SYDNEY ROBERT STAPLETON, 1716 East 115th Street, Cleveland, Ohio 44106,

and

JEAN TUSSEY, 3054 Euclid Heights Boulevard Cleveland Heights, Ohio 44118

Plaintiffs,

—v.—

JAMES A. RHODES, In His Representative Capacity as Governor of the State of Ohio, Governor's Mansion, Columbus, Ohio 43215,

TED W. BROWN, In His Representative Capacity as Secretary of State, State of Ohio, State House, Columbus, Ohio 43215,

PAUL W. BROWN, In His Representative Capacity as Attorney General, State of Ohio, State House, Columbus, Ohio 43215,

ROBERT HUGHES, DAN W. DUFFY, SAUL G. STILLMAN, and JOHN J. CARNEY, In Their Representative Capacities as Members of the Board of Elections, Cuyahoga County, Cleveland, Ohio,

and

JOSEPH A. CIPOLLONE, In His Representative Capacity as Director of the Board of Elections, Cuyahoga County, Cleveland, Ohio,

Defendants.

PARTIES

1. Plaintiff Helen Marcia Sweetenham is a citizen and elector of the State of Ohio. She resides in the City of Cleveland. She is a graduate of Oberlin College, Oberlin, Ohio and for the last five years has been a teacher in the East Cleveland School System. She is an independent candidate for the office of Governor of the State of Ohio in the November, 1970 general elections. She intends to be a candidate in future elections as well.

2. Plaintiff Sydney Robert Stapleton is a citizen and elector of the State of Ohio. He resides in the City of Cleveland and within the Twenty-Second Congressional District of Ohio. He will be twenty-five years of age in September, 1970, and has been a citizen of the United States for more than seven years. He is an independent candidate for the office of United States Representative from the Twenty-Second Congressional District of Ohio in the November, 1970 general elections. He intends to be a candidate in future elections as well.

3. Plaintiff Jean Tussey is a citizen and elector of the State of Ohio. She resides within the Twenty-Second Congressional District of Ohio. She is a supporter of plaintiffs Sweetenham and Stapleton and she wishes to exercise her franchise by voting for their election in the November, 1970 Elections. She sues on her own behalf and on behalf of all other supporters of plaintiffs Sweetenham and Stapleton who wish to vote for them in the November, 1970 elections; and all others similarly situated as independent voters. These persons constitute a class too numerous to bring before this court. There are common questions of law and fact affecting all members of the class and a common relief is sought. This plaintiff will adequately represent this class.

4. Plaintiffs Sweentenham and Stapleton sue on their own behalf, on behalf of all other candidates who qualify their candidacies on independent grounds, and on behalf of all other persons similarly situated. These persons are too numerous to bring before this Court. There are common questions of law and fact affecting all members of the class. A common relief is sought.

5. Defendant James A. Rhodes, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Governor of the State of Ohio. The Governor of Ohio is charged with the general duty of enforcing the statutes of the State of Ohio and with the particular responsibility under Section 3505.38, Ohio Revised Code of signing the certificates of Election issued by the Secretary of the State of Ohio to those persons declared duly elected to the office of the United States Representative.

6. Defendant Ted W. Brown, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Secretary of State of Ohio with his office and official residence in Columbus, Ohio and his county office in Cleveland, Ohio at the Cuyahoga County Board of Elections. He is the chief elections officer of Ohio under Section 3501.05, Ohio Revised Code. Section 3505.38, Ohio Revised Code requires him to issue certificates of election to those persons declared elected to office, including the office of United States Representative. Independent candidates must file their declarations of candidacy with him. Section 3513.05, Ohio Revised Code.

7. Defendant Paul W. Brown, as are his successors in office, is sued individually and in his representative capacity as the duly qualified and acting Attorney-General of the State of Ohio. He is the chief law officer for the State of Ohio. Section 109.02, Ohio Revised Code. He has certain specific duties with respect to Ohio election procedure. Sections 3505.35, 3519.01, 3513.06, and 3515.13, Ohio Revised Code.

8. Defendants Hughes, Duffy, Stillman and Carney, as are their successors in office, are sued in their representative capacities as members of the Cuyahago County Board of Elections and as agents of the Secretary of State of Ohio, for the conduct of elections in Cuyahoga County. Defendant Cipollone, as are his successors in office, is sued in his representative capacity as the duly appointed and acting Director of the Cuyahoga County Board of Elections. Independent candidates for the office of United States Representative must file their nominating petitions with the various Boards of Elections. Section 3513.05, Ohio Revised

Code. The Boards of Elections determine the sufficiency of the signatures on the petition papers not later than the 15th day of July. Section 3513.262, Ohio Revised Code.

JURISDICTION

9. This Court has jurisdiction of the parties and of the subject matter of this complaint under 42 United States Code Section 1983; 28 United States Code Section 1343(3), (4); 28 United States Code Section 2201; and Article I, Section 2; Article IV, Sections 2 and 4; and Amendments I, IX, and XIV to the United States Constitution.

CAUSE OF ACTION

10. Plaintiffs Sweetenham and Stapleton say they will cause nominating petitions to be circulated on their behalf in order to place their names on the ballot in the November, 1970 general election as independent candidates for the Offices of Governor of Ohio and United States Representative from the Twenty-Second Congressional District of Ohio.

11. Section 3513.258 Ohio Revised Code requires that independent candidates for Governor file nominating petitions containing the valid signatures of qualified electors in a number equal to "not less than four per cent of the number of electors who voted for governor, or for presidential electors, at the next preceding regular state election." (Hereafter, this is referred to as the "four per cent requirement.") Under prior Ohio statutes and until January 1, 1952, independent candidate for Governor could be nominated and placed on the ballot by obtaining signatures of one per cent of the number of electors who voted for governor at the next preceding regular state election.

for the office of governor in the district. Section 3513.258 Ohio Revised Code also requires that:

> Such petition shall contain signatures of at least two hundred electors from each of at least thirty counties in the state, and the total number of signatures of electors from any one county shall not be in excess of one fourth of the total number of signatures needed on the petition.

(Hereafter this requirement is called the "thirty county requirement.").

12. Section 3513.257 requires that independent candidates for the office of United States Representative file nominating petitions containing the valid signatures of qualified electors equal to "not less than four per cent of the number of voters who voted for governor, or presidential electors, at the next preceding election for the office of governor in the district." Under prior Ohio statutes and until 1952, such candidates could qualify by securing signatures in the amount of one per cent.

13. Both Sections 3513.257 and 3513.258 require that independent nominating petitions be filed "not later than four p.m. of the nineteenth day before the first Tuesday after the first Monday in May immediately preceding [the] general election." (Hereafter this is referred to as the "ninety day requirement.")

14. Candidates for party nomination to the office of Governor need only one thousand signatures to have their names printed on the ballot in their party primary and candidates for party nomination to the office of United States Representative may have their names printed on

the ballot in primary elections of their party by obtaining only 100 valid signatures both by virtue of Section 3513.05, Ohio Revised Code. Victors in the primary elections then have their names placed on the ballot in the general elections without further requirements.

15. Four per cent of the electors who voted for presidential electors at the next preceding regular state election is in excess of 158,388. Four per cent of the electors who voted for governor at the next preceding regular state election for governor in the Twenty-Second Congressional District is in excess of 5,572. These figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are therefore unconstitutional.

16. The thirty county requirement in Section 3513.258, Ohio Revised Code, for the office of governor violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and offends the fundamental one-man-one vote concept of representative government in the United States. A similar scheme has been held unconstitutional by the United States Supreme Court in *Moore* v. *Ogilvie*, 394 U.S. 814, (1969). The requirement here is likewise unconstitutional.

17. The ninety day requirement of Sections 3513.257 and 3513.258, Ohio Revised Code is unreasonable, capricious, arbitrary and therefore unconstitutional. It places an unnecessary burden on independent candidates thereby narrowing the number of contestants and constricting the election process. This Court has already held the requirement invalid.

18. Plaintiffs Sweetenham and Stapleton say that unless restrained by this Court, the defendants or their successors in office will deny them a place on the ballot as independent candidates in the November 1970 election unless they comply with the aforesaid unconstitutional provisions. This denial will abridge their constitutional rights in several respects; to wit:

a. Their basic constitutional rights to be candidates for an office for which they are otherwise qualified, contrary to the Fourteenth Amendment.

b. Their right to equal protection of the laws in that the requirements for independent candidates described above constitute indivious discriminations without any relationship to constitutionally justified ends, contrary to the Fourteenth Amendment.

c. Their right to due process of law in that the requirements described above are arbitrary and capricious requirements unrelated to proper governmental purposes contrary to the Fourteenth Amendment, and

d. Their right to express freely their views as candidates for public office in violation of the First Amendment of the United States Constitution.

19. Unless relief is granted by this Court, plaintiff Tussey and the class she represents will be deprived of the opportunity to vote on an equal basis for the candidates of her choice in this election. This will violate her constitutional rights in these respects:

a. By denying her the free exercise of her right to participate as a voter and citizen in the election of a Governor of Ohio and a United States representative from the 22nd Congressional District of Ohio, contrary to Article I, Section 2;

b. By denying her the privileges and immunities guaranteed citizens in the several states, contrary to Article IV, Section 2;

c. By violating the guarantee to her of a republican form of government contrary to Article IV, Section 4;

d. By denying her rights retained by the people, contrary to the Ninth Amendment;

e. By denying her Equal Protection of the Laws and Due Process of Law, contrary to the Fourteenth Amendment; and

f. By denying her the right to express her views by voting for a candidate of her choice contrary to the First Amendment to the United States Constitution.

19. Plaintiffs say that unless this Court grants them relief they will suffer irreparable injury and they have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

(1) That upon the filing of this complaint the presiding judge of this Court shall call to his assistance in the hearing and determination of this cause two other judges, of whom at least one shall be a circuit judge, pursuant to 28 USC Sections 2281 and 2284.

(2) That this case be advanced for prompt hearing and determination.

(3) That pending the hearing and determination of this cause, the defendants be enjoined from denying plaintiffs Sweetenham and Stapleton ballot position solely for failure to comply with the aforesaid unconstitutional requirements.

(4) That this Court hold and declare that Section 3513.257 and Section 3513.258 of the Ohio Revised Code insofar as they contain the four per cent requirement, the ninty day requirement, and the thirty county requirement are void, invalid, and unconstitutional.

(5) That upon final hearing of this cause this Court issue a permanent injunction restraining defendants, their agents and successors from enforcing Sections 3513.257 and 3513.258 and from denying plaintiffs Sweetenham and Stapleton a place on the ballot in the November, 1970 election for failing to comply with the aforesaid unconstitutional provisions.

(6) And for such other and further relief as the Court may deem equitable and proper.

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Attorneys for plaintiffs.

[Verification omitted in printing.]

Answer of Defendants James A. Rhodes, Governor, State of Ohio, Ted W. Brown, Secretary of State, and Paul W. Brown, Attorney General, State of Ohio

Civil Action File No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied for lack of knowledge.

2. Denied for lack of knowledge.

3. Denied for lack of knowledge.

4. Denied for lack of knowledge.

5. Admitted.

6. Admitted, except allegation that the Secretary of State has a county office in Cleveland, Ohio, at the Cuyahoga County Board of Elections.

7. Admitted.

8. Admitted

9. Admitted.

10. Denied for lack of knowledge.

11. Admitted.

12. Admitted.

13. Denied.

14. Admitted.

15. Admitted, except allegation that these figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are therefore unconstitutional.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

Further answering, Defendants James A. Rhodes, Governor of the State of Ohio, Ted W. Brown, Secretary of State and Paul W. Brown, Attorney General, State of Ohio deny each and every allegation of the complaint not heretofore specifically admitted. Wherefore, having fully answered, said Defendants pray that the complaint be dismissed.

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Answer of Defendants Robert Hughes, Dan W. Duffy, Saul G. Stillman, John J. Carney, Members of the Board of Elections, Cuyahoga County, Ohio, and Joseph A. Cipollone, Director of Elections, Cuyahoga County, Ohio

Civil Action File No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied.

2. Denied for lack of knowledge, except for the fact that said plaintiff is a citizen and elector.

3. Denied for lack of knowledge, except for the fact that said plaintiff is a citizen and elector.

4. Denied for lack of knowledge.

5. Admitted.

6. Admitted, except allegation that the Secretary of State has a county office in Cleveland, Ohio at the Cuyahoga County Board of Elections.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied for lack of knowledge.

11. Admitted.

12. Admitted.

13. Denied.

14. Admitted.

15. Admitted, except allegation that these figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are, therefore, unconstitutional.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

Further answering, Defendants Robert Hughes, Dan W. Duffy, Saul G. Stillman, John J. Carney, Members of the Board of Elections, Cuyahoga County, Ohio, and Joseph A. Cipollone, Director of Elections, Cuyahoga County, Ohio, deny each and every allegation of the Complaint not heretofore specifically admitted.

WHEREFORE, having fully answered, said answering defendants pray that the Complaint be dismissed.

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Motion to Amend Complaint

Case No. C70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Plaintiffs move the Court for leave to amend their complaint on file herein in the following particular:

1. Amending numbered paragraph 13 on page 5 of the complaint so that on the third line of that paragraph the word "nineteenth" is deleted and the word "ninetieth" is substituted in its stead.

The grounds of this motion are that this will correct an inadvertent, typographical error which in no way affects the substance of the proceedings.

BENJAMIN B. SHEERER
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241-3646
Attorney for the plaintiffs

[Affidavit of service omitted in printing.]

Order

Civil Aetion 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Being fully advised, the Court determines that the May 14, 1970 motion of plaintiffs to amend their complaint is meritorious and therefore it is GRANTED.

Plaintiff's complaint is hereby AMENDED accordingly.

JOSEPH P. KINNEARY
United States District Judge

Motion for Leave to Amend Answer

Case No. C70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Now comes the defendants James A. Rhodes, Governor, Ted W. Brown, Secretary of State, and Paul W. Brown, Attorney General, and move the Court for leave to amend their answer by admitting the allegations of numbered paragraph 13, of the amended complaint.

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Plaintiffs' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Notice is hereby given that Helen Marcia Sweetenham, et al., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on July 29, 1970, wherein the three-judge district court properly declared certain Ohio election laws to be violative of the United States Constitution in that they prevent independent candidates from qualifying for the ballot in general elections, but failed to properly declare another such section violative of the United States Constitution and therefore failed to order appropriate relief for plaintiffs herein.

This appeal from the part of the judgment and final order failing to declare said section unconstitutional and denying appropriate relief is taken pursuant to 28 U.S.C. §1253.

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Defendants' Notice of Appeal to the Supreme Court of the United States

Civil Action 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Now come the defendants James A. Rhodes, Governor of Ohio, Ted W. Brown, Secretary of State of Ohio, and Paul W. Brown, Attorney General of Ohio, and appeal to the Supreme Court of the United States from the judgment and final order entered in this case on July 29, 1970, insofar as it holds the following to be unconstitutional: the provision of Section 3513.257, Ohio Revised Code, requiring an independent candidate for the office of district representative to Congress to file a nominating petition signed by not less than four percent of the number of electors who voted for governor, or for presidential electors, at the next preceding regular state election for the office of governor in the district; the provision of Section 3513.258, Ohio Revised Code, requiring an independent candidate for the office of governor to file a nominating petition signed by not less than four percent of the number of electors who voted for governor, or for presidential electors, at the

next preceding regular state election; and the provisions of Section 3513.258, Ohio Revised Code, that such petition contain signatures of at least two hundred electors from each of at least thirty counties in the state, and that the total number of signatures of electors from any one county shall not be in excess of one fourth of the total number of signatures required on the petition.

This appeal from part of the final order and judgment is taken pursuant to 28 U.S.C. Section 1253.

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Opinion of the United States District Court

Civil Action 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Civil Action 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Kinneary, District Judge. These cases were consolidated for hearing, decision and order because they involve common questions of law concerning the election laws of Ohio. The plaintiffs also seek similar relief from the alleged unconstitutionality of these laws.

The jurisdiction of the Court was invoked and arises under Title 42, United States Code, Sections 1981, 1983 and 1988, 28 United States Code, Sections 1343(3) and (4), 2201, 2202, 2281 and 2283, and Amendments I and XIV of the United States Constitution.

This three judge court was designated pursuant to the determination that the requisites for the convening of such a court were present on the faces of the complaints.

The joint hearing was held on July 16, 1970. These actions are submitted on the complaints, the answers, the plaintiffs' motions for summary judgment filed in both actions, the defendant Paul W. Brown's motion for summary judgment filed in Civil Action 70-23, the memoranda, affidavits and appendices in support of all such motions and oral arguments.

The plaintiffs allege that certain sections of the Ohio election laws governing political parties and ballot position for party and independent candidates are unconstitutional in that they violate the First and Fourteenth Amendments to the United States Constitution.

In the Socialist Labor Party case plaintiffs allege that the following statutes are unconstitutional:

1. Section 3517.01, Ohio Revised Code, which defines a political party and requires that a party either receive seven percent of the vote cast in the last preceding election for its candidate for governor or its nominees for presidential electors, or that it file with the Secretary of State a petition signed by qualified electors who represent seven percent of the total vote for governor or presidential electors at the last preceding election;

2. Sections 3517.02-3517.04, Ohio Revised Code, which specify the organizational structure of a party;

3. Section 3513.11, Ohio Revised Code, which requires that a political party elect a specified number of delegates and alternates to a state convention;

4. Sections 3505.10 and 3513.12, Ohio Revised Code, which require a state party to be part of a national political party which holds national conventions at which delegates elected in state primaries nominate presidential and vice-presidential candidates; and

5. Section 3517.07, Ohio Revised Code, which requires a political party file with county boards of election a "loyalty" oath.

The plaintiffs in the Sweetenham case allege that the following Ohio election statutes violate the First and Fourteenth Amendments to the Constitution of the United States:

1. Section 3513.25.7, Ohio Revised Code, which regulates the candidacy of independent candidates for district representative to congress; and

2. Section 3513.25.8, Ohio Revised Code, which regulates the candidacy of independent candidates for governor.

Each of these cases will be considered separately.

The Political Party Case

The facts surrounding the Socialist Labor Party's standing as a political party are not in dispute.[1] The Socialist

[1] In 1968 the United States Supreme Court held that the Socialist Labor Party was a political party entitled to ballot position in Ohio. *Williams* v. *Rhodes*, 383 U.S. 23, 27-28 (1968); *Id.* at 40 (Douglas, J., concurring). The Supreme Court refused to afford ballot position to the Socialist Labor Party through injunctive relief solely because the State of Ohio indicated it could not, at that late date, print and distribute ballots including the party's nominees for presidential electors.

Labor Party was founded as a national political party in 1890. Since 1892 it has run candidates for President of the United States in every presidential election. In 1964 it was on the ballot in sixteen states and conducted a write-in campaign in nine states; in 1968 it was on the ballot in fourteen states and conducted a write-in campaign in eight states, including Ohio.

The Ohio Socialist Labor Party has nominated and run candidates for political office in Ohio since 1895.[2] In 1968 the Socialist Labor Party's write-in candidate for President of the United States received 120 votes in Ohio. It has a membership of approximately 108 persons. Since the 1968 election the Socialist Labor Party has maintained its organizational structure and continued to participate in political activity within the State of Ohio.[3]

On April 26, 1970, the Socialist Labor Party held a convention in Cleveland, Ohio, at which it nominated John O'Neill as its candidate for United States Senator and Joseph Pirincin as its candidate for Governor of Ohio.[4] There is no evidence that any of the plaintiffs in the Socialist Labor Party case or its candidates have filed or attempted to file nominating petitions for the offices of Gov-

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[2] Plaintiff's motion for summary judgment, Appendix A.

[3] The uncontroverted affidavit of the plaintiff, Joseph Pirincin, states that the members of the Socialist Labor Party distributed over 100,000 pieces of literature in Ohio during 1969 and conducted political education classes. Further, its candidate for Mayor of Cleveland conducted a campaign during 1969 in which he appeared on numerous radio and television shows. Plaintiff's motion for summary judgment, Appendix C.

[4] Affidavit of Joseph Pirincin, May 16, 1970.

ernor of Ohio or United States Senator.[5] The Socialist Labor Party seeks ballot status for its candidates for United States Senator and Governor of Ohio.[6].

The defendant Paul Brown, as Attorney General of Ohio, moved for summary judgment, contending that the action be dismissed on the ground that the Socialist Labor Party had no bona fide candidates for United States Senator and Governor of Ohio. This contention is wholly without merit. The complaint, filed January 28, 1970, alleged the Ohio State Committee of the Socialist Labor Party nominated John O'Neill as the Party's candidate for United States Senator. However, Article 7, Section 6, of the Socialist Labor Party's by-laws provides that the state convention of the Party shall make nominations for political office. At this convention, John O'Neill was nominated for United States Senator and Joseph Pirincin for Governor of Ohio. Thus, the defendants argue that this Court could not have granted relief in January, 1970 and should not now grant relief because the defendants have made inconsistent allegations.

To maintain this action the plaintiffs were not required to hold their state convention before filing suit. The names of their candidates for Governor and United States Senator are unimportant to the consideration of their asserted constitutional right to participate as a political party in November, 1970 general election. The April 1970 state convention is evidence that the Socialist Labor Party is a

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[5] Affidavit of Ted Brown, Secretary of State of Ohio, May 5, 1970.

[6] Affidavit of Joseph Pirincin, May 16, 1970.

viable political party, not an indication that it is unworthy to participate in Ohio elections as defendants' brief suggests.

The complaint alleges that the Socialist Labor Party is an Ohio political party which intends to run candidates for the offices of United States Senator and Governor of Ohio in the November 1970 general election but, unless relief is granted, it will be denied ballot position by certain unconstitutional Ohio election laws. The complaint, therefore, alleges facts sufficient to provide a basis for this Court to grant relief. Moreover, subsequent uncontroverted affidavits identify the particular candidates of the Party who desire ballot position. The Court finds these candidates were duly nominated by the Socialist Labor Party. Therefore, the Court denies defendants' motion for summary judgment.

We come now to the merits of the Socialist Labor Party case. For the purpose of disposing of the issue before us, it is unnecessary for this Court to decide or declare anything in respect of the constitutionality of Sections 3517.02, 3517.03 and 3517.04, Ohio Revised Code, because these sections were declared unconstitutional in *Williams* v. *Rhodes, supra,* at 24-26, 34, *Id.* at 36-38 (Douglas, J. concurring), and they stand unamended today. Nonetheless, this present three judge court, at the outset, recognizes the aforedeclared unconstitutionality of these statutes, both by a prior three judge court of this district and the United States Supreme Court.

In *Williams* v. *Rhodes, supra,* the Supreme Court stated that these sections, which were included in the complex of statutes considered by the three judge court in *Socialist*

Labor Party v. *Rhodes*, 290 F. Supp. 985, 990, are "a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause." Sections 3517.02-3517.04 require a political party to use a particular form of party organization. The state may set out guidelines describing desirable, and in proper circumstances, mandatory forms of organization, but they cannot prescribe a mode of organization which denies individuals the right to associate for the advancement of political beliefs and prevents qualified voters from casting their votes effectively. *Williams* v. *Rhodes, supra* at 30.

Section 3513.11, Ohio Revised Code provides that a political party shall hold a state convention in even numbered years. It requires that all state officers, county chairmen and committee members, certain candidates, and 500 delegates attend. This statute, in effect, requires a complex state organization modeled after those of the Democratic and Republican Parties. The Supreme Court condemned such requirements in *Williams* v. *Rhodes, supra* at 25, 33.[7]

We now consider 3505.10 and 3513.12, Ohio Revised Code. Here again both of these statutes were held unconstitutional by the Supreme Court in *Williams* v. *Rhodes, supra*. After *Williams* these sections were amended.

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[7] The Court in *Williams* v. *Rhodes, supra*, considered Section 3513.12, Ohio Revised Code [and its companion Section 3505.10, Ohio Revised Code] an analogous provision to Section 3513.11 which requires that delegates and alternates must be elected to a national party convention. There are no substantial differences between the condemned organizational requirements contained in §3513.12 and those contained in §3513.11.

Section 3505.10 was amended to provide space on the ballot for the names of independent candidates, who properly filed with the Secretary of the State of Ohio, to be printed on the presidential ballot and to provide a blank space on the presidential ballot for write-in candidates. Section 3513.12 was amended to provide that candidates at large to a party's national political convention could file a group petition with the Secretary of State of Ohio, thus reducing the number of signatures required on the petition.[8] Neither of these amendments cures the constitutional infirmity condemned by the Supreme Court in *Williams* v. *Rhodes, supra.*

We hold that Sections 3505.10 and 3513.12, Ohio Revised Code, are burdensome on the right of political association and the right of qualified voters to cast their ballots effectively in that they require a national party convention and that only the names of candidates nominated at a national party convention be printed on the presidential ballot. These sections, in effect, require Ohio political parties to maintain complex national organizations and to run candidates for the office of President of the United States as a condition for having the names and party affiliation of its candidates for state office printed on the ballot. They are thus a part of a restrictive statutory scheme regulating parties and elections which are violative of the First and Fourteenth Amendments to the United States Constitution.

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[8] Previously, each person seeking nomination at large to a national party political convention had to file a petition with the Secretary of the State of Ohio.

Following the Supreme Court's decision in *Williams* v. *Rhodes*, *supra*, Section 3517.01, Ohio Revised Code, was amended to provide that:

> A political party . . . is any group which, at the last preceding regular state election, polled for its candidate for governor in the state or *nominees for presidential electors* at least seven [previously ten] per cent of the entire vote cast for *such office* or which filed with the secretary of state a petition signed by qualified electors equal in number to at least seven [previously fifteen] per cent of the total vote cast for governor *or nominees for presidential electors* at the last preceding election, declaring their intention of organizing a political party . . . and of participating in the next succeeding *primary* election *held in even numbered years, that occurs more than one hundred and twenty days after the date of filing.* [Italics indicates language included by 1969 amendment.]

The amendments to Section 3517.01, as they pertain to this case (1) reduced the number of petitioners required from fifteen to seven percent of the vote cast for governor or nominees for presidential electors at the last preceding election, (2) provided that the petitioners be a designated percentage of the vote cast for either governor or nominees for presidential electors, instead of governor and (3) increased the filing deadline for the petition from "ninety days before an election" to one hundred and twenty days before the next primary election.

The requirement that an association desiring recognition as a political party under Ohio's election laws either (1)

have polled seven percent of the vote in the last preceding election for governor or nominees for presidential electors or (2) present a petition to the Secretary of State containing the signatures of qualified voters who represent seven percent of the votes cast in the last preceding election for governor or nominees for presidential electors, is still patently burdensome.

We hold that the requirement of a petition containing signatures of qualified voters equal at least to seven percent of the total vote last cast for governor or presidential electors, which is substantially more demanding than the comparable provisions of other states,[9] is unconstitutional.

In oral argument the defendants asserted that the seven percent requirement was constitutional because it was enacted to protect the state's interest in having candidates on the ballot who (1) have made a substantial showing of voter interest at a time prior to the election and (2) are bona fide good faith candidates for elective office. Further, they assert the seven percent requirement protects the ballot and electors from frivolous or publicity seeking candidates, and, with reference to political parties, the fact of collecting signatures is an indicia of the requisite minimal political organizational ability the state may require a party to manifest. The Court does not necessarily quarrel with the defendants' contention that it may constitutionally seek to preserve these interests. Nevertheless, the manner in which they seek to do so is unconstitutional. Ohio's requirements are far too burdensome on plaintiffs' right to

[9] See Appendix D to plaintiff's memorandum in support of motion for summary judgment.

political association and the right of qualified voters to cast their ballots effectively.

Justice Harlan noted in his concurring opinion in *Williams* v. *Rhodes, supra,* at 47 n. 9, that forty-two states had petition signatory requirements of one percent or less and that forty-nine states required signatures of five per cent or less. Ohio's newly enacted seven percent requirement is thus still a much more burdensome restriction on third parties than any of the other forty-nine states impose. Rather than requiring a showing of voter interest, the seven percent requirement prohibits third parties from participating in elections.

The interests the state seeks to preserve may be protected without resort to a statutory scheme so restrictive that a small third party with a long and continuing history of political activity has no objective opportunity to participate in the elective process.

The fear of frivolous candidates and the bed sheet ballot is shown to be only meretricious by the history of Ohio's elections prior to 1952. See, *Williams* v. *Rhodes, supra* at 47 n. 9.

So far we have considered the specific sections of the Ohio election laws which the Supreme Court has held are unconstitutional as well as those sections which the Ohio Legislature amended after the decision in *Williams* v. *Rhodes, supra.* At this time we deem it appropriate to consider the overall pattern of election laws governing third parties in Ohio.

In *Williams* v. *Rhodes, supra,* at 25, the Supreme Court, after setting out the general outlines of Ohio election laws, said:

> The State of Ohio in a series of election laws has made it virtually impossible for . . . an old political party, which has a very small number of members, to be placed on the state ballot . . .

As previously noted, the Socialist Labor Party began its political activity in Ohio in 1895 and has continued active participation in Ohio politics to the present time. During the period 1895 to 1946, Socialist Labor Party candidates for various state and federal offices gained ballot position. Between 1948 and 1952 the Ohio Legislature enacted the statutory scheme which existed until 1969 when the Ohio Legislature made some pretense of conforming to the pronouncement of unconstitutionality in *Williams*.

Justice Harlan, in his concurring opinion in *Williams* v. *Rhodes, supra,* at 47, n. 9, succinctly sets out the circumstances surrounding the genisis of Ohio's restrictive election laws:

> Before [1952], independent candidates had been granted a place on the ballot if they could gather the signatures of registered voters in the number of 1% of those voting at the preceding gubernatorial election and present their petitions 60 days before the general election. The State's experience under this unexacting regime is instructive. Voting statistics compiled by Ohio's Secretary of State reveal that since 1900 no more than seven parties have appeared on the ballot to compete for a major statewide or national office. And even this number was not attained after 1908. During the last 10 years of the old regime, there are

only two third-party candidates of record. The State took effective action only after Electors pledged to Henry A. Wallace gained some 30,000 votes out of the 3,000,000 cast in 1948. Since Harry S. Truman carried the State by some 7,000 votes, the Wallace vote might well have been decisive if it had increased marginally.

The changes in Ohio election laws effectuated in the 1948-1952 period dramatically, and adversely, affected the rights of individuals to associate for the advancement of political beliefs. They also deprived qualified voters of the right to effectively cast their ballots for candidates other than those running as Democrats or Republicans. From 1952 to date there was not one independent or third party candidate on the Ohio ballot running for a state office.[10]

It is thus clear from the history of Ohio's election laws that since 1952 they have effectively precluded persons in Ohio from exercising their rights to political association outside the Democratic and Republican parties. To justify such a restriction on an important, constitutionally guaranteed right, the state must show a compelling state interest. It has not done so. Everything that has happened in the Ohio electoral process since 1952 suggests that no compelling state interest justifies the perpetuation of the present statutory entanglement.

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[10] Plaintiffs' Motion for Summary Judgment, Appendix A. Nominees for presidential electors pledged to George Wallace were placed on the Ohio ballot as a result of *Williams* v. *Rhodes*, *supra*. There have been no other independent or third party candidates since 1952 for a national office.

The State of Ohio has an obligation to protect the right of political association guaranteed all persons through the First and Fourteenth Amendments. The state has not afforded this protection. The 1969 amendments to the election laws merely perpetuates the restrictive laws enacted between 1948 and 1952.[11] The overall effect of these laws is still to deny to plaintiffs their constitutional right of political association. Although the number of qualified voter signatures on the petition for recognition as a party was reduced from fifteen to seven percent, the requirement still constitutes a significant barrier to ballot position. More importantly, there remains the complex set of regula-

[11] Section 3517.01, Ohio Revised Code, was amended to reduce the signature requirement on petitions for third party ballot recognition from fifteen percent to seven percent of the voters for governor or nominees for presidential electors. Section 3517.01 changed the filing date from ninety days before the election to one hundred and twenty days before the primary election preceding the general election. In addition, Section 3517.013 was added permitting persons previously affiliated with a recognized political party to be candidates of a newly recognized party.

Section 3517.014 exempts candidates of newly-formed parties from the first primary following recognition of the party. Sections 3517.015 and 3517.016 permit any qualified voter to sign the petition for party recognition and vote in the first party primary without regard to previous political affiliation.

With the exception of the seven percent requirement and the filing date for the petition these changes are ameliorative of the prior restrictive election laws. Section 3505.10 was amended in conformity with *Williams* to permit write-in candidates on the presidential ballot.

However, none of the other laws noted in *Williams* to be restrictive were amended to comply with the clear meaning of the Supreme Court's opinion. Sections 3517.02 through 3517.04, Ohio Revised Code, remain law. Section 3505.10 still requires a national convention to choose a presidential candidate, although new parties are apparently exempted from the first primary following their recognition. Section 3517.014, Ohio Revised Code.

tions governing party organization explicitly condemned in *Williams* by the Supreme Court.

Rather than assuring the constitutional right of political association, the Ohio election laws make it virtually impossible for third party candidates and independent candidates to gain ballot position. This established fact cannot be turned aside or reasoned away.

Plaintiffs' third cause of action alleges that Section 3517.07, Ohio Revised Code, abridges their right to political association. Section 3517.07 provides in relevant part:

> Any party or group desiring to have a place on the ballot shall file with the Secretary of State and with the board of elections in each county in which it desires to have a place on the ballot an affidavit . . . under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government; that it does not carry on any program of sedition or treason by radio, speech or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government or so carrying on a program of sedition or treason by radio, speech, or press.
>
> . . .
>
> This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

Plaintiffs contend that Section 3517.07 (1) bars from the ballot political parties which abstractly advocate the overthrow of the government by force and violence, (2) abridges associational rights, (3) is overly broad, (4) is impermissibly vague, (5) violates due process because it places the burden of proving loyalty on the political party and (6) violates the Equal Protection Clause by excepting the Democratic and Republican Parties from its ambit.

It is well established that loyalty oaths which fail to distinguish between abstract advocacy and advocacy directed at promoting unlawful action must be stricken as unwarranted invasions of free speech. *Keyishian* v. *Board of Regents*, 385 U.S. 589, 599-600 (1960); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447-448 (1969).

Section 3517.07 is overly broad on its face in that it attempts to prohibit mere advocacy. However, the Ohio Supreme Court, in *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127 (1948) construed the section narrowly. That Court recognized a distinction between attempt and mere advocacy:

> One who would *attempt* by any means to overthrow the government by force would be a traitor and there would be justification for dealing with him in accordance with the enormity of his offense. The government has the inherent power to defend and protect itself.
>
> To advocate an entire [and permissible] change in our form of government is an entirely different matter. *State ex rel. Beck* v. *Hummel*, *supra* at 137.

The Ohio Supreme Court went on to hold that the mere fact that certain members of the Progressive Party had

been or were members of the Communist Party did not constitute a connection with any group or organization advocating the overthrow of the government within the meaning of the Ohio loyalty oath law. *Id.* at 258.

The United States Supreme Court in *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951) recognized the constitutionality of an oath requirement for candidates for elective office, if the oath is limited to the assertion that the candidate is:

> not a person who is engaged in one way or another in the *attempt* to overthrow the government by *force or violence*, and that he is not knowingly a member of an organization engaged in such an attempt. [Emphasis added.]

The *Gerende* decision has been cited approvingly by the Supreme Court on many occasions. *See, e.g., Whitehill v. Elkins*, 389 U.S. 54, 57-58 (1967); *Speiser v. Randall*, 357 U.S. 513, 527 (1958).

The Court holds that Section 3517.07, Ohio Revised Code, narrowly construed to require an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence, is constitutional.

The Independent Candidates Case

Plaintiff Marcia Sweetenham is an independent candidate for Governor of Ohio in the November 1970 general

election.[11] Plaintiff Robert Stapleton is an independent candidate for Congressman from Ohio's Twenty-Second Congressional District in the November 1970 general election.[12] Plaintiff Jean Tussey is a citizen and registered voter who supports the candidacies of plaintiffs Sweetenham and Stapleton.

Plaintiffs assert the unconstitutionality of that part of Section 3513.258, Ohio Revised Code, which requires independent candidates for statewide office file with the secretary of state a petition including the signatures of at least two hundred electors from each of at least thirty counties, and limits the total number of signatures obtained from qualified voters in any one county to no more than one fourth of those needed on the nominating petition.

Ohio has eighty-eight counties. In the 1960 census Ohio had a total population of 9,705,336 persons. Over two-thirds of Ohio's population lives in the sixteen largest counties. Over fifty percent of Ohio's population lives in the seven largest counties.

The thirty county requirement results in a marked dilution of the voting strength of urban voters as opposed to rural voters, violating the principle of one man, one vote. *See, Gray* v. *Sanders,* 372 U.S. 368 (1963); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). Under Section 3513.258 the fifty percent of Ohio's qualified voters living in its seven largest counties are disabled from nominating independent candidates for state wide office.

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[11] Affidavit of Marcia Sweetenham.

[12] *Ibid.*

In *Moore* v. *Ogilvie*, 394 U.S. 814 (1969) the Supreme Court struck down an Illinois statute which required independent candidates for presidential electors to secure two hundred signatures in each of fifty counties.[13]

The state has presented no compelling reason for these discriminatory restrictions on the right to nominate independent candidates for state office. This Court determines there is no such compelling state interest. As the Supreme Court said in *Moore* v. *Ogilvie, supra* at 818-819:

> It is no answer to the argument under the Equal Protection Clause that this law was designed to require state support for a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. *The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.* [Emphasis added.]

The Court further holds that the provisions of Section 3513.258, Ohio Revised Code, which require a petition to contain signatures of at least 200 qualified voters from each of thirty counties is unconstitutional in that it is violative of the principle of one man, one vote. *Moore* v. *Ogilvie, supra; Socialist Workers Party* v. *Hare*, 304 F. Supp. 534 (E.D. Mich. 1969).

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[13] Illinois has 102 counties.

The requirement that no more than one fourth of the signatures necessary be obtained from any one county is similarly unconstitutional. It reduces the voting strength of voters located in Ohio's largest counties. There is no compelling state interest in limiting the number of qualified voters in any one county who may sign a candidate's petition. Each voter is entitled to the full weight of his vote. *Moore* v. *Ogilvie, supra.*

The state cannot use county lines as a determinant of which voters may exercise rights associated with the franchise.

> Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. *Reynolds* v. *Sims,* 377 U.S. 553, 580 (1964).

Plaintiffs allege that the part of Section 3513.257, Ohio Revised Code, which requires an independent candidate for the office of representative to Congress to file a nominating petition signed by four percent of the number of electors who voted for governor or presidential electors in the district at the last preceding regular state election and the similar part of Section 3513.258 which requires signatures of qualified voters representing four percent of the total state vote for governor or nominees for presidential elector in the last preceding election are unconstitutional.

This same requirement for independent candidates was discussed in *Socialist Labor Party* v. *Rhodes, supra* at 994 (Kinneary, J. concurring in part and dissenting in part):

> During the fifteen year period prior to 1947, participation in the electoral process by independently nominated candidates was neither substantial *nor* disruptive. Nevertheless in that year the Ohio General Assembly began a series of changes in the election laws which ultimately resulted in the complete elimination of independent and third party voters and candidates from Ohio's political arena.

Since that opinion the Ohio Legislature has reduced the petition signature requirement for independent candidates from seven to four percent. However, the state has shown no compelling state interest in raising the one percent requirement to seven percent or to the present four percent, nor has it demonstrated a compelling reason for the four percent requirement.

The state contends, properly, that it has an interest in a nominating procedure for independent candidates which requires a substantial showing of voter interest evidenced prior to the election. Further, it has a right to keep frivolous candidates off the ballot and wherever constitutionally possible to avoid the use of the "bed sheet" ballot which may result in voter confusion. The problem with these arguments is that when Ohio had a one percent signature requirement all of these conditions were satisfied. See, *Williams* v. *Rhodes*, 393 U.S. 23, 47 n. 9 (1968) (Harlan, J., concurring). The state has the burden of justifying the four percent requirement and the Court holds that it has failed to do so.

In addition to denying the right of association and the right of qualified voters to cast their ballots effectively,

the four percent requirement invidiously discriminates between independent and party candidates. Independent candidates for Congress in plaintiff Stapleton's district must obtain at least 5,572 valid signatures. But party candidates need obtain only one hundred signatures. Independent candidates for state wide office must obtain at least 158,388 valid signatures, whereas party candidates need obtain only 1,000 signatures. The state has not demonstrated a compelling interest supporting the differential treatment afforded independent and party candidates. Mere membership in a political party does not assure that a candidate has a substantial electoral support. A candidate collecting 100 or 1,000 signatures may well be running without any party or electoral support. If it is assumed that party membership of a candidate gives the state some intangible guarantee of worthiness for ballot position, this consideration does not merit such disproportionate requirements for signatures on a nominating petition.

Plaintiffs allege that those parts of Sections 3513.257 and 3513.258, Ohio Revised Code, which require nominating petitions to be filed "not later than 4:00 P.M. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding [the] general election" are unconstitutional.

The state has an interest in having persons who otherwise qualify for ballot position officially become candidates at a designated time prior to an election. In addition, the state may reasonably require that all persons seeking elective office become officially declared candidates on or before a certain date preceding an election. One may not

play dog in a political manger by withholding his determination of candidacy until after party candidates are chosen by the primary process.

The plaintiffs Sweetenham and Stapleton herein had not taken steps to become candidates prior to the May 1970 primary election. Plaintiff Sweetenham had obtained 1,600 signatures on her nominating petition by June 29, 1970.[14] Plaintiff Stapleton had obtained 2,455 signatures on his nominating petition by June 29, 1970.[15] Neither plaintiff has filed or tendered a nominating petition with the designate state or county official. Candidates for parties which participated in the primary election were chosen in the May 1970 primary election. The Socialist Labor Party candidates whom this Court has held are entitled to ballot position were chosen on April 26, 1970.[16]

The Court holds that plaintiffs Sweetenham and Stapleton, who did not officially declare their candidacy at or before the time Ohio requires political parties to choose their nominees, are not entitled to ballot position.

THEREFORE, THE COURT DENIES plaintiffs' prayer for injunctive relief placing them on the ballot.

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[14] Affidavit of Helen Marcia Sweetenham.

[15] Affidavit of Sydney Robert Stapleton.

[16] Affidavit of Joseph Pirincin, May 16, 1970.

Order

It is hereby ordered:

1. That the defendants are permanently enjoined from enforcing Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, Ohio Revised Code, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged in this Opinion;

2. That the Socialist Labor Party by name, and its candidate for Governor, John O'Neill, and its candidate for United States Senator, Joseph Pirincin, all be placed upon the ballot for the 1970 Ohio general election;

3. That the defendants are permanently enjoined from enforcing those portions of Sections 3513.257 and 3513.258, Ohio Revised Code, which deprive plaintiffs of constitutionally guaranteed rights as adjudged in this Opinion.

John W. Peck
Judge, United States Court of Appeals
for the Sixth Circuit

Carl A. Weinman
Chief Judge, United States District Court,
Southern District of Ohio

Joseph P. Kinneary
Judge, United States District Court
Southern District of Ohio

Amended Order

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Civil Action No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

This matter is before the Court on its own motion under the provisions of Rule 60(a), Fed. R. Civ. P. to amend its Order entered July 29, 1970.

Through clerical error, paragraph two of the Court's Order of July 29, 1970 reads as follows:

> 2. That the Socialist Labor Party by name, and its candidate for Governor, John O'Neill, and its candidate for United States Senator, Joseph Pirincin, all be placed upon the ballot for the 1970 Ohio general election;

The Socialist Labor Party's candidate for Governor is Joseph Pirincin; its candidate for United States Senator is John O'Neill. Affidavit of Joseph Pirincin, May 16, 1970.

ACCORDINGLY, IT IS HEREBY ORDERED THAT the Court's Order of July 29, 1970 be amended to read as follows:

> 2. That the Socialist Labor Party by name, and its candidate for Governor, Joseph Pirincin, and its candidate for United States Senator, John O'Neill, all be placed upon the ballot for the 1970 Ohio general election;

JOHN W. PECK
Judge, United States Court of Appeals
for the Sixth Circuit

CARL A. WEINMAN
Chief Judge, United States District Court,
Southern District of Ohio

JOSEPH P. KINNEARY
Judge, United States District Court
Southern District of Ohio